

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

JAMES EUGENE STOREY,

Petitioner,

vs.

STEPHANIE HUMPHREY, *et al.*,

Respondents.

3: 06-cv-0658-ECR-RAM

**ORDER**

This is a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in which petitioner, a former state prisoner, is proceeding *pro se*. This case is before the court for decision on the merits.

**PROCEDURAL HISTORY**

On April 27, 2005, petitioner was convicted of manufacturing and trafficking a controlled substance in the Eighth Judicial District Court, Clark County. (Docket #12-2, Exhibit 5.) Following petitioner's direct appeal of his conviction, the Nevada Supreme Court affirmed the conviction on November 17, 2005. (Docket #12-3, Exhibit 6.) On May 12, 2006, petitioner filed a post-conviction petition for writ of habeas corpus in the Eighth Judicial District Court. (Docket #12-3, Exhibit 8.) On August 1, 2006, the trial court denied the petition. (Docket #12-4, Exhibit 9.)

1 On September 5, 2006, petitioner filed a notice of appeal of the trial court's denial of his petition.  
 2 (Docket #12-4, Exhibit 10.) On February 28, 2007, the Nevada Supreme Court issued an order of  
 3 affirmance. (Docket #18-11, Exhibit 25.)

4 Petitioner's federal petition for writ of habeas corpus was received by this court on  
 5 December 1, 2006. (Docket #1.) Respondents filed a motion to dismiss on February 28, 2007  
 6 (Docket #12), which this court denied as moot on July 19, 2007 (Docket #15). Pursuant to court  
 7 order, respondents filed an answer on October 4, 2007. (Docket #18.)

### 8 **LEGAL STANDARDS**

9 On April 24, 1996, Congress enacted the Antiterrorism and Effective Death Penalty  
 10 Act of 1996 ("AEDPA"), which applies to all petitions for writ of habeas corpus filed after its  
 11 enactment. *Lindh v. Murphy*, 521 U.S. 320, 117 S.Ct. 2059, 2063 (1997), *cert. denied*, 522 U.S.  
 12 1008, 118 S.Ct. 586 (1997); *Jeffries v. Wood*, 114 F.3d 1484, 1499 (9<sup>th</sup> Cir. 1997) (quoting *Drinkard*  
 13 *v. Johnson*, 97 F.3d 751, 769 (5<sup>th</sup> Cir.1996), *cert. denied*, 520 U.S. 1107, 117 S.Ct. 1114 (1997),  
 14 *overruled on other grounds by Lindh v. Murphy*, 521 U.S. 320, 117 S.Ct. 2059 (1997) (holding  
 15 AEDPA only applicable to cases filed after statute's enactment). The instant petition was filed after  
 16 the enactment of the AEDPA, thus it is governed by its provisions.

17 This court may entertain a petition for writ of habeas corpus "in behalf of a person in  
 18 custody pursuant to the judgment of a State court only on the ground that he is in custody in violation  
 19 of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a).

20 The AEDPA altered the standard of review that a federal habeas court must apply with  
 21 respect to a state prisoner's claim that was adjudicated on the merits in state court. *Williams v.*  
 22 *Taylor*, 120 S.Ct. 1495, 1518-23 (2000). Under the AEDPA, an application for habeas corpus will  
 23 not be granted unless the adjudication of the claim "resulted in a decision that was contrary to, or  
 24 involved an unreasonable application of, clearly established Federal law, as determined by the  
 25 Supreme Court of the United States;" or "resulted in a decision that was based on an unreasonable  
 26 determination of the facts in light of the evidence presented in the State Court proceeding." 28

1 U.S.C. § 2254(d); *Lockyer v. Andrade*, 123 S.Ct. 1166, 1173 (2003) (disapproving of the Ninth  
 2 Circuit’s approach in *Van Tran v. Lindsey*, 212 F.3d 1143 (9<sup>th</sup> Cir. 2000)); *Williams v. Taylor*, 120  
 3 S.Ct. 1495, 1523 (2000). “A federal habeas court may not issue the writ simply because that court  
 4 concludes in its independent judgment that the relevant state-court decision applied clearly  
 5 established federal law erroneously or incorrectly.” *Lockyer*, at 1174 (citations omitted). “Rather,  
 6 that application must be objectively unreasonable.” *Id.* (citations omitted).

7 While habeas corpus relief is an important instrument to assure that individuals are  
 8 constitutionally protected, *Barefoot v. Estelle*, 463 U.S. 880, 887, 103 S.Ct. 3383, 3391-3392 (1983);  
 9 *Harris v. Nelson*, 394 U.S. 286, 290, 89 S.Ct. 1082, 1086 (1969), direct review of a criminal  
 10 conviction is the primary method for a petitioner to challenge that conviction. *Brecht v.*  
 11 *Abrahamson*, 507 U.S. 619, 633, 113 S.Ct. 1710, 1719 (1993). In addition, the state court’s factual  
 12 determinations must be presumed correct, and the federal court must accept all factual findings made  
 13 by the state court unless the petitioner can rebut “the presumption of correctness by clear and  
 14 convincing evidence.” 28 U.S.C. § 2254(e)(1); *Purkett v. Elem*, 514 U.S. 765, 115 S.Ct. 1769  
 15 (1995); *Thompson v. Keohane*, 516 U.S. 99, 116 S.Ct. 457 (1995); *Langford v. Day*, 110 F.3d 1380,  
 16 1388 (9<sup>th</sup> Cir. 1997).

## 17 DISCUSSION

18 In ground one, petitioner contends that his fourth amendment rights relating to  
 19 searches, seizures and warrants were violated. Petitioner’s entire discussion of ground one is as  
 20 follows:

21 Initial search of residence lacked search warrent [sic]. Officers justified entry on  
 22 exigent circumstances however later testified nothing was dangerous or cooking in  
 preliminary statements. Page 20 line 10. Issues are raised in W.O.H.C. and direct  
 appeal.

23 (Docket #6, p. 3.)

24 In addressing this issue on direct appeal, the Nevada Supreme Court held as follows:

25 First, Storey claims that the district court erred when it denied his pretrial  
 26 petition for a writ of habeas corpus. In his petition, Storey contended that the initial  
 intrusion into his apartment was unconstitutional, that observations made during this

1 intrusion formed the basis for a search warrant, and therefore evidence seized during  
 2 the execution of the search warrant was tainted and must be suppressed. Storey  
 3 specifically argued that because he was arrested outside of his apartment, the initial  
 warrantless intrusion into the apartment could not be justified by exigent  
 circumstances.

4 During Storey's preliminary hearing, Officer Michael Beitel testified that he  
 and Officer Thomas Stoll went to Storey's apartment to investigate an allegation of  
 5 petty larceny. When Storey opened the door, Officer Beitel detected an order that he  
 knew from his training and experience was associated with methamphetamine  
 6 production. Officer Beitel detained Storey and Officer Stoll entered the apartment to  
 search for other occupants. After clearing the residence, the officers informed the  
 7 dispatcher that they had encountered a methamphetamine laboratory and asked her to  
 contact the narcotics detectives. Under these facts, we conclude that the warrantless  
 8 intrusion into the apartment was necessary to prevent physical harm to the officers  
 and other persons and the destruction of relevant evidence. [Footnote omitted.]  
 Therefore, the district court did not err in denying Storey's pretrial habeas petition.

9 (Docket 12-2, Exhibit 6, p. 1-2.)

10 In ground two, petitioner contends that his fifth amendment rights affecting criminal  
 11 proceedings and due process were violated. Petitioner's entire discussion of ground two is as  
 12 follows:

- 13 A. State allowed other arrests and criminal history in trial as bad acts. It was  
 14 allowed in the states [sic] motion to consolidate not the required Petrocelli  
 15 hearing. Attourney [sic] for defendant should have sought pre-trial motions  
 in limine for such testimony also raised in post conviction W.O.H.C.  
 16 B. White supremecists [sic] materials were allowed info [sic] evidence. Trial  
 attourney [sic] should have sought pre-trial motion in limine.  
 17 C. Immflamatory [sic] evidence affected due process at trial.

18 All issues are raised in direct appeal and post conviction writ of habeas  
 corpus.

19 (Docket #6, p. 5.)

20 In addressing these issues on direct appeal, the Nevada Supreme Court held as  
 21 follows:

22 Second, Storey claims that the district court erred when it determined sua  
sponte that the State could present evidence obtained in an unrelated case because the  
 23 evidence was probative to the issues of a common scheme or plan and the absence of  
 mistake. Our review of the record reveals that the district court conducted a Petrocelli  
 24 hearing [footnote omitted], considered the factors required by Tinch [footnote  
 omitted], and concluded that the danger of unfair prejudice did not substantially  
 25 outweigh the probative value of the evidence.

26 We conclude that the district court did not commit manifest error [footnote  
 omitted], and that any danger of unfair prejudice was alleviated when the jurors were  
 instructed that the evidence was to be considered "only for the limited purpose of

1 proving the defendant's opportunity, intent, motive, plan, knowledge, identity or  
 2 absence of mistake or accident: and not to show criminal predisposition. [Footnote  
 omitted.] Therefore, the district court did not err in permitting the State to admit other  
 bad act evidence.

3 Third, Storey claims that the district court erred by denying his motion to  
 4 strike evidence of other bad acts. In his motion, Storey contended that this evidence  
 was obtained during an illegal pretextual traffic stop and as a result of an improper  
 5 custodial interrogation, and he argued that it should have been suppressed under the  
 exclusionary rule.

6 Officer Christopher Cannon testified that he initiated the traffic stop after  
 determining that the car was a rental and its license plates had expired. Because  
 Storey was unable to produce a rental agreement and proof of current insurance  
 7 coverage, Officer Cannon decided to have the car towed and asked Storey to get out  
 of the car. Storey's nervous behavior and his repeated statements that he need to go,  
 8 along with the fact that Officer Cannon was alone in [a] high crime neighborhood,  
 created a dangerous situation that prompted Officer Cannon to place Storey in  
 9 handcuffs. While conducting an inventory search of the car, Officer Cannon found a  
 paper bag on the floorboard and asked Storey if the bag was his. Officer Cannon  
 10 opened the bag after Storey Acknowledged that it was his. The bag contained red  
 phosphorus, methamphetamine, and pseudoephedrine.

11 We conclude that Officer Cannon had a valid reason for initiating the traffic  
 stop [footnote omitted], that ordering Storey out of the car and placing him in  
 12 handcuffs was an appropriate precautionary measure and did not convert the traffic  
 stop into an arrest [footnote omitted], and that Officer Cannon's question about the  
 13 ownership of the paper bag was not an interrogation. [Footnote omitted.] Therefore,  
 the district court did not err in denying Storey's pretrial motion to suppress.

14  
 15 (Docket # 12-2, Exhibit 6, p. 2-4.)

16 In ground three, petitioner contends that his fourteenth amendment right to  
 17 "representation" was violated. Petitioner's entire discussion of ground three is as follows:

18 Denied due process of law. Issues were raised in post conviction writ of habeas  
 corpus and appointment of counsel. I am indigent and have little if any knowledge of  
 19 law. I am intitled [sic] to effective assistance of counsel.

20 (Docket #6, p. 7.)

21 In ground four, petitioner contends that he was denied his sixth amendment right to  
 22 "due process or effective assistance of counsel." Petitioner's entire discussion of ground four is the  
 23 statement that "issues are raised in post conviction writ of habeas corpus." *Id.*

24 In addressing the issue of ineffective assistance of counsel in petitioner's appeal from  
 25 the denial of his post-conviction petition for writ of habeas corpus, the Nevada Supreme Court held  
 26 as follows:


1 Appellant claimed that his trial counsel was ineffective for failing to move the  
2 court for the exclusion of (1) prior bad acts and (2) a police statement regarding white  
3 supremacist materials found at appellant's residence. Our review of the record on  
4 appeal reveals that these claims are belied by the record. [Footnote omitted.] Counsel  
5 did object to the admission of this evidence. [Footnote omitted.] Additionally, this  
6 court held on direct appeal that the district court did not err in permitting the  
admission of prior bad act evidence. Further, this court held that the witness's remark  
regarding white supremacist materials had been cured and that the remark was  
harmless. Therefore, appellant failed to demonstrate that his counsel's performance  
was deficient or that he was prejudiced. Thus, the district court did not err in denying  
these claims.

7 (Docket #18-11, Exhibit 25, p. 2-3.)

8 The court has reviewed petitioner's contentions, the totality of which are set forth  
9 above. The court finds that petitioner has not carried his burden of demonstrating that the Nevada  
10 Supreme Court's adjudication of his claims "resulted in a decision that was contrary to, or involved  
11 an unreasonable application of, clearly established Federal law, as determined by the Supreme Court  
12 of the United States;" or "resulted in a decision that was based on an unreasonable determination of  
13 the facts in light of the evidence presented in the State Court proceeding." 28 U.S.C. § 2254(d).  
14 Accordingly, the court finds that petitioner has not established any basis for habeas corpus relief.

15 **IT IS THEREFORE ORDERED** that this petition for writ of habeas corpus is  
16 **DENIED.** The Clerk is directed to enter judgment for respondents and to close this case.

17  
18 DATED this 30th day of September, 2009.

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21 UNITED STATES DISTRICT JUDGE  
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